

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

KEVIN ALVARO,

X

Plaintiff,
-against -

DIOCESE OF ALBANY, and OUR LADY OF
MERCY CHURCH

Defendants.

X

Plaintiffs designate
ALBANY COUNTY
as place of trial.

The basis of venue is
Plaintiff's residence
address

SUMMONS

Plaintiff resides at 109 Van
Dyke Place, Apt. 8,
Guilderland, NY 10284

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York): and in case your failure to appear or answer, judgement will be taken for the relief demanded herein.

**A COPY OF THIS SUMMONS WAS FILED WITH THE CLERK OF THE COURT,
ALBANY COUNTY ON _____ IN COMPLIANCE WITH CPLR §§305(a) AND
306(a).**

Dated: New York, New York
August 14, 2019

MERSON LAW, PLLC

By: 

Jordan K. Merson
Attorneys for Plaintiff
150 East 58th Street 34th Floor
New York, New York 10155
(212) 603-9100

TO:
DIOCESE OF ALBANY
40 N. Main Avenue, #4
Albany, NY 12203

OUR LADY OF MERCY CHURCH
26 Wilson Avenue
Albany, NY 12205

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY****Index No.: _____/19****X****KEVIN ALVARO,****Plaintiff,
-against -****VERIFIED
COMPLAINT****DIOCESE OF ALBANY, and OUR LADY OF
MERCY CHURCH****Defendants.****X**

Plaintiff, above named, complaining of the Defendants, by **MERSON LAW, PLLC.**, respectfully allege(s):

NATURE OF THE CLAIM

1. This is a case of Plaintiff, KEVIN ALVARO who was sexually abused as a child by Father Alan Jupin (“Jupin”) at and of the Roman Catholic Diocese of Albany (the “Diocese”).
2. Jupin was a priest at Our Lady of Mercy Church in Albany, New York which was part of the Diocese. Jupin was known among the community and the children as a sexual predator.
3. Despite the Diocese’s knowledge that Jupin sexually abused children and/or had the propensity to sexually abuse children, the Diocese allowed Jupin unfettered access to children, including on Church and Diocese premises.
4. In approximately 1983, while under the scope of employment with the Diocese and while acting on behalf of the Diocese, Jupin would recruit and/or solicit Mr. Alvaro, then approximately thirteen years old, to attend parties at his apartment where he would ply

Mr. Alvaro with alcohol and sexually abuse him by kissing him, fondling his penis, raping him and other sexual abuse.

5. Mr. Alvaro brings this lawsuit to recover for the emotional and physical suffering he incurred because of the negligence of the Roman Catholic Diocese of Albany and to make sure no other child is forced to suffer the abuse and physical and mental trauma he felt and continues to feel.

PARTIES

6. At all times herein mentioned Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** was a not for profit corporation incorporated in the State of New York and by virtue of the laws of the State of New York.
7. At all times herein mentioned, Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** was located at 40 N. Main Avenue, #4, Albany, New York 12203.
8. At all times herein mentioned, Jupin was a priest operating under the direction and control of Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY**, and its agents, servants and/or employees.
9. At all times herein mentioned, Jupin was an agent, servant and/or employee of Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY**.
10. At all times herein mentioned Defendant **OUR LADY OF MERCY CHURCH** was a not for profit corporation incorporated in the State of New York and by virtue of the laws of the State of New York.
11. At all times herein mentioned, Defendant **OUR LADY OF MERCY CHURCH** was located at 26 Wilson Avenue, Albany, NY 12205.

12. At all times herein mentioned, Jupin was a priest operating under the direction and control of Defendant **OUR LADY OF MERCY CHURCH**, and its agents, servants and/or employees.
13. At all times herein mentioned, Jupin was an agent, servant and/or employee of Defendant **OUR LADY OF MERCY CHURCH**.
14. At all times herein mentioned, Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** and Defendant **OUR LADY OF MERCY CHURCH** were agents, servants, employees and/or alter egos of each other.

FACTS OF THE CASE

15. Defendants **ROMAN CATHOLIC DIOCESE OF ALBANY** and/or **OUR LADY OF MERCY CHURCH** negligence and recklessness caused, allowed, encouraged and/or permitted Jupin have access to children, including on Diocese and/or Church premises, despite its knowledge that Jupin sexually abused children and/or had the propensity to do so, and therefore are responsible for the injuries that Plaintiff incurred because but for Defendants **ROMAN CATHOLIC DIOCESE OF ALBANY** and/or **OUR LADY OF MERCY CHURCH**'s negligence, Plaintiff would not have suffered the mental and physical anguish inflicted by Father Jupin. Defendants **ROMAN CATHOLIC DIOCESE OF ALBANY** and/or **OUR LADY OF MERCY CHURCH** gross negligence, reckless, wanton, and/or willful conduct warrants punitive liability.
16. Jupin sexually assaulted Mr. Alvaro and many other young male patrons at Defendant **OUR LADY OF MERCY CHURCH** in Albany, New York. Nonetheless Defendants **ROMAN CATHOLIC DIOCESE OF ALBANY** and/or **OUR LADY OF MERCY CHURCH** failed to remove Jupin from his position as a priest or to take any steps to

keep the dangerous predator away from children. In fact, the Diocese continued to allow, encourage and/or permit Jupin to have unfettered access to children.

17. Jupin used Mr. Alvaro's desire to fit in to invite him to parties in his home with other boys so that he could ply Mr. Alvaro with alcohol, get him drunk and sexually abuse and rape him.
18. Jupin would cook for Mr. Alvaro, give them alcohol and the other boys and force them to watch inappropriate movies with him. Mr. Alvaro recalls being foggy after just two drinks.
19. Jupin would kiss Mr. Alvaro on the mouth and put his hand down Mr. Alvaro's pants and fondle him until he ejaculated.
20. Jupin also forcefully raped and sodomized Mr. Alvaro.
21. As a result of the actions of Father Jupin, Mr. Alvaro felt and continues to feel ashamed, embarrassed and uncomfortable. Mr. Alvaro had endured and continues to suffer severe emotional distress due to the Diocese's negligence.
22. As such, Plaintiff suffered catastrophic and lifelong injuries as a result of Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** and/or **OUR LADY OF MERCY CHURCH**'s negligence in undertaking a duty, including but not limited to in locis parentis and failing to protect the children of its parishes and of its community safe from Jupin, despite the Diocese having knowledge that Jupin sexually abused children and/or had the propensity to sexually abuse children, and/or allowing Jupin to continue to have his role and position of authority and power, and the Diocese and/or Church failed to adequately supervise Jupin.

**AS AND FOR A FIRST CAUSE OF ACTION FOR NEGLIGENCE AS TO THE
ROMAN CATHOLIC DIOCESE OF ALBANY**

23. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 22., inclusive, with the same force and effect as if hereinafter set forth at length.
24. At all times mentioned herein, Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** owed a duty of care to keep the children of its parishes safe from sexual abuse by its clergymen under its supervision, including on company and/or Church premises, and control that ultimately befell the Plaintiff, including but not limited to *in locis parentis*, and they had a duty to supervise Jupin.
25. At all times mentioned herein, Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** and/or its agents, servants and/or employees breached the above-stated duty in a negligent, reckless, willful and wanton manner, and caused Plaintiff to be sexually assaulted repeatedly.
26. As a result of the negligence of Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** and/or its agents, servants and/or employees, Plaintiff was caused serious personal injuries, emotional distress, mental pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
27. By reason of the foregoing, Plaintiff is entitled to compensatory damages from Defendant in such sums as a jury would find fair, just and adequate.
28. By reason of the foregoing, Plaintiff is entitled to punitive damages from Defendant in such sums as a jury would find fair, just and adequate.

29. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
30. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR A SECOND CAUSE OF ACTION FOR NEGLIGENCE AS TO OUR
LADY OF MERCY CHURCH**

31. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 30., inclusive, with the same force and effect as if hereinafter set forth at length.
32. At all times mentioned herein, Defendant **OUR LADY OF MERCY CHURCH** owed a duty of care to keep the children of its parishes safe from sexual abuse by its clergymen under its supervision, including on company and/or Church premises, and control that ultimately befell the Plaintiff, including but not limited to *in locis parentis*, and they had a duty to supervise Jupin.
33. At all times mentioned herein, Defendant **OUR LADY OF MERCY CHURCH** and/or its agents, servants and/or employees breached the above-stated duty in a negligent, reckless, willful and wanton manner, and caused Plaintiff to be sexually assaulted repeatedly.
34. As a result of the negligence of Defendant **OUR LADY OF MERCY CHURCH** and/or its agents, servants and/or employees, plaintiff was caused serious personal injuries, emotional distress, mental pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
35. By reason of the foregoing, Plaintiff is entitled to compensatory damages from Defendant in such sums as a jury would find fair, just and adequate.

36. By reason of the foregoing, Plaintiff is entitled to punitive damages from Defendant in such sums as a jury would find fair, just and adequate.
37. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR A THIRD CAUSE OF ACTION FOR NEGLIGENT HIRING,

RETENTION AND SUPERVISION AS TO THE ROMAN CATHOLIC DIOCESE OF

ALBANY

38. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 37., inclusive, with the same force and effect as if hereinafter set forth at length.
39. Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY**, had a duty to supervise and prevent known risks of harm to patrons of its parishes by its clergymen.
40. Defendant was negligent in hiring, retaining and supervising their personnel, such as Father Jupin, who were careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of priests and church officials who should have properly been supervising the priests to ensure the safety of the children of the parishes.
41. Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** knew or should have known that Father Jupin sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.
42. As a result of such negligent hiring, supervising and retention, Plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental

anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.

43. By reason of the foregoing, Plaintiff is entitled to compensatory damages from Defendant in such sums as a jury would find fair, just and adequate.
44. By reason of the foregoing, Plaintiff is entitled to punitive damages from Defendant in such sums as a jury would find fair, just and adequate.
45. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
46. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR A FOURTH CAUSE OF ACTION FOR NEGLIGENT HIRING,

RETENTION AND SUPERVISION AS TO OUR LADY OF MERCY CHURCH

47. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 46., inclusive, with the same force and effect as if hereinafter set forth at length.
48. Defendant **OUR LADY OF MERCY CHURCH**, had a duty to supervise and prevent known risks of harm to patrons of its parishes by its clergymen.
49. Defendant was negligent in hiring, retaining and supervising their personnel, such as Father Jupin, who were careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of priests and church officials who should have properly been supervising the priests to ensure the safety of the children of the parishes.

50. Defendant **OUR LADY OF MERCY CHURCH** knew or should have known that Father Jupin sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.
51. As a result of such negligent hiring, supervising and retention, Plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
52. By reason of the foregoing, Plaintiff is entitled to compensatory damages from Defendant in such sums as a jury would find fair, just and adequate.
53. By reason of the foregoing, Plaintiff is entitled to punitive damages from Defendant in such sums as a jury would find fair, just and adequate.
54. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
55. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR THE FIFTH CAUSE OF ACTION FOR NEGLIGENT INFILCTION OF
EMOTIONAL DISTRESS AS TO THE ROMAN CATHOLIC DIOCESE OF ALBANY**

56. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 55., inclusive, with the same force and effect as if herein set forth at length.
57. Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** and their agents, servants and/or employees, knew or reasonably should have known that the failure to properly advise, supervise and hire Father Jupin, the priest who sexually abused Plaintiff, would and did proximately result in physical and emotional distress to Plaintiff.

58. Defendant **ROMAN CATHOLIC DIOCESE OF ALBANY** and their agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to Plaintiff.
59. Defendant has the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Father Jupin.
60. Despite said knowledge, power and duty, Defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that resulted Father Jupin sexually abusing Plaintiff.
61. By reason of the foregoing, Plaintiff is entitled to compensatory damages from Defendant in such sums as a jury would find fair, just and adequate.
62. By reason of the foregoing, Plaintiff is entitled to punitive damages from Defendant in such sums as a jury would find fair, just and adequate.
63. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
64. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR THE SIXTH CAUSE OF ACTION FOR NEGLIGENT INFILCTION OF

EMOTIONAL DISTRESS AS TO OUR LADY OF MERCY CHURCH

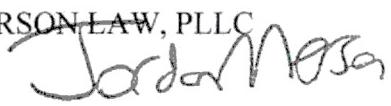
65. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 64., inclusive, with the same force and effect as if herein set forth at length.
66. Defendant **OUR LADY OF MERCY CHURCH** and their agents, servants and/or employees, knew or reasonably should have known that the failure to properly advise,

supervise and hire Father Jupin, the priest who sexually abused Plaintiff, would and did proximately result in physical and emotional distress to Plaintiff.

67. Defendant **OUR LADY OF MERCY CHURCH** and their agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to Plaintiff.
68. Defendant has the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Father Jupin.
69. Despite said knowledge, power and duty, Defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that resulted Father Jupin sexually abusing Plaintiff.
70. By reason of the foregoing, Plaintiff is entitled to compensatory damages from Defendant in such sums as a jury would find fair, just and adequate.
71. By reason of the foregoing, Plaintiff is entitled to punitive damages from Defendant in such sums as a jury would find fair, just and adequate.
72. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
73. This action falls within exceptions to Article 16 of the C.P.L.R.

WHEREFORE, plaintiff demands judgement against Defendant in such sum as a jury would find fair, adequate and just.

Dated: New York, New York
August 14, 2019

MERSON LAW, PLLC
By: 
Jordan K. Merson

Attorney for Plaintiffs
150 East 58th Street 34th Floor
New York, New York 10155
(212)603-9100

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Index No.:
/19

-----X

KEVIN ALVARO,

Plaintiff,
-against -

**ATTORNEY
VERIFICATION**

ROMAN CATHOLIC DIOCESE OF ALBANY and
OUR LADY OF MERCY CHURCH,

Defendants.

-----X

JORDAN K. MERSON, an attorney duly admitted to practice in the Courts of New York State, and a member of the firm MERSON LAW, PLLC., attorneys for the Plaintiffs in the within action, hereby affirms under penalty of perjury:

That he has read the within complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the sources of his information and knowledge are investigations and records in the file.

That the reason this verification is made by affirmant and not by the Plaintiff is that the Plaintiff is not within the County where the attorney has his office.

Dated: New York, New York
August 14, 2019


JORDAN K. MERSON

Index No.

Year 2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

KEVIN ALVARO,

Plaintiff,

- against -

DIOCESE OF ALBANY, and OUR LADY OF
MERCY CHURCH

Defendant(s),

SUMMONS AND VERIFIED COMPLAINT

Merson Law, PLLC.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone
150 East 58th Street 34th Fl.
New York, New York 10155
(212) 603-9100

To: All Parties
